IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY ELIZABETH HOLMES, Plaintiff, v. PIZZA HUT OF AMERICA, INC., Defendant.	Civil Action No.97-4967

Gawthrop, J. August 28, 1998

M E M O R A N D U M

Before the court in this employment discrimination action is defendant's motion for summary judgment. Plaintiff alleges claims under the Americans with Disabilities Act ("ADA"), the Family and Medical Leave Act ("FMLA"), and for wrongful termination. For the reasons discussed below, defendant's motion will be granted.

I. Background

In June, 1983, Plaintiff Mary Holmes began employment with Pizza Hut of America, Inc. ("Pizza Hut"). She was promoted to Assistant Manager in 1985 and to Manager in 1989. In August, 1990, she was transferred to a restaurant in Lima, Pennsylvania, where she served as Restaurant General Manager. In addition to

these promotions, plaintiff also received numerous warnings, both written and spoken, of violations of company policy during her tenure at Pizza Hut.[1]

In the spring of 1996, Pizza Hut performed an audit on all Philadelphia area restaurants, including the one managed by plaintiff. The audit uncovered an overstatement of inventory by hundreds of dollars. This led to Pizza Hut's calling in, on May 10, 1996, an internal auditor to inventory plaintiff's restaurant. Pizza Hut asserts that the inventory revealed "significant variances from the ideal usage figures." Def. Br. at 4. Pizza Hut alleges that plaintiff was present during the audit, refused to verify the discrepancies, and also refused to open a storage shed for inspection. At her deposition, plaintiff stated that the internal audit was performed outside her presence, that she was never informed of any discrepancies, and that she never refused to let anyone look in the storage shed. According to Pizza Hut, on May 15, 1996, plaintiff confirmed the findings of the May 10 audit during her weekly inventory and explained that she was "catching things up." Plaintiff admits to having taken inventory, but denies finding any discrepancies.

Plaintiff states that on May 17, 1996, in accordance with

---

[1] These warnings of violations ranged from not wearing the appropriate uniform and tardiness to failure to meet audit requirements and failure to verify deposits. Plaintiff was also suspended in April, 1991 for violation of policy #625, a provision addressing employee absenteeism.

her doctor's orders, she requested a week of leave.[2] At that time, she had not actually been examined by her physician, Dr. Su Kenderdine, but rather, she had explained her symptoms over the telephone. During plaintiff's phone conversation with Dr. Kenderdine's office, she requested that Dr. Kenderdine send a note to Pizza Hut indicating plaintiff's need for time off. The note, dated May 17, was not received by Pizza Hut until May 21, 1996, but stated that plaintiff had been under Dr. Kenderdine's care from May 17 through May 19.[3] After examining plaintiff on May 21, Dr. Kenderdine sent a second note to Pizza Hut stating that plaintiff required leave from May 22 to May 28 because of "acute stress related anxiety." Pizza Hut alleges that it never received Dr. Kenderdine's May 22 note, but that it did not deny plaintiff leave.

On May 23, 1996, while plaintiff was on leave, Ms. McCartney and Connie Dillon, Pizza Hut's Area Manager in the Philadelphia market, performed a second audit of plaintiff's restaurant. The second audit revealed that plaintiff was misappropriating money, violating cash control procedures, failing to properly maintain the deposit log, and depositing funds untimely -- actions which violated Pizza Hut policy #913.

---

[2] Because of understaffing at the restaurant, plaintiff worked her regular schedule until May 21, 1996.

[3] Pizza Hut contends that they were not informed of plaintiff's request for leave until their receipt of the note on May 21, 1996.

On May 28, 1996, the last day of plaintiff's requested leave, Dr. Kenderdine wrote a third note to Pizza Hut, stating that plaintiff required an additional ten days to two weeks of leave. On May 29th, Pizza Hut sent plaintiff a letter stating that her medical leave would be counted as FMLA leave. On that same date, Ms. Dillon sent plaintiff a letter asking plaintiff to contact her immediately, and that her failure to do so would be considered an abandonment of her position with Pizza Hut. Plaintiff called Ms. Dillon's secretary to report that she was still under her doctor's care. Plaintiff did not attempt to speak directly with Ms. Dillon. On June 6, 1996, Pizza Hut sent plaintiff a letter notifying her that she was "on suspension pending further internal audit investigation," and that "should this investigation prove reasons for termination and you do not make contact with me, termination will be executed through the U.S. Mail." Plaintiff received the June 6 letter on June 7. Based on Dr. Kenderdine's instruction to have no contact with people from Pizza Hut, plaintiff did not attempt to contact Ms. Dillon. On June 14, 1996, Pizza Hut sent plaintiff a letter informing her that:

> The internal audit investigation found manipulation of cash control, inventory and P&A, all in violation of company policy 913. Furthermore, these infractions all occurred on days that you were scheduled, on duty and prior to your medical leave. In accordance with Pizza Hut's policies and disciplinary procedures, these infractions are terms for

immediate termination.

Plaintiff received the termination letter on June 18, 1996. At her deposition, plaintiff denied knowledge of Pizza Hut's investigations, and denied that she violated Pizza Hut policy.

II. Discussion

A. ADA Claim

Defendant moves for summary judgment on plaintiff's ADA claim on the grounds that she has failed to exhaust her administrative remedies, that she is not a "qualified individual with a disability" within the meaning of the ADA, and that she was not discriminated against on the basis of any disability.

1. Exhaustion of Administrative Remedies

"It is a basic tenet of administrative law that a plaintiff must exhaust all required administrative remedies before bringing a claim for judicial relief." Robinson v. Dalton, 107 F.3d 1018, 1020 (3d Cir. 1997) (citing McKart v. United States, 395 U.S. 185, 193 (1969)). Title I of the ADA, 42 U.S.C. § 12101, et seq., prohibits discrimination in employment on the basis of

disability and vests the EEOC with responsibility for enforcing the ADA's provisions, using remedies and procedures contained in Title VII. See 42 U.S.C. §12117(a). Thus, a party who brings an employment discrimination claim under Title I of the ADA must follow the administrative procedures set forth in Title VII, 42 U.S.C. § 2000e-5. Although this procedure is not jurisdictional, a party must exhaust these administrative remedies before suing in federal court. Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 396 (1982).

Title VII provides that a charge of employment discrimination must be filed with the United States Equal Employment Opportunity Commission ("EEOC") within 180 days after the alleged act of discrimination. 42 U.S.C § 2000e-5(e)(1). If, however, the plaintiff initially filed a complaint with a state or local fair-employment agency, she is allotted 300 days from the date of the alleged discrimination within which to file a charge of employment discrimination with the EEOC. 42 U.S.C. § 2000e-5(e). Therefore, since plaintiff here filed a complaint with the PHRC, she had 300 days after the alleged act of discrimination in which to bring a charge with the EEOC. See Davis v. Calgon Corp., 627 F.2d 674, 675 (3d Cir. 1980) (per curiam) (holding 300-day limitations period applied even though plaintiff's filing with state agency was untimely).

Defendant argues that because plaintiff neither dually filed

with the PHRC and the EEOC, nor filed with the EEOC itself, within the appropriate time frame, she cannot now sue in federal court. A federal court lacks jurisdiction to hear a Title VII claim, unless the plaintiff has filed a charge with the EEOC. Woodson v. Scott Paper Co., 109 F.3d 913, 926 (3d Cir. 1997). However, many state and local fair employment agencies have entered into contracts and "work-sharing agreements" with the EEOC providing that the filing with the state agency constitutes a filing with the EEOC and visa versa. 29 C.F.R. § 1601.13(a)(4)(ii); See, e.g., Kedra v. Nazareth Hosp., 857 F. Supp. 430, 432 (E.D. Pa. 1994) (stating that under worksharing agreement, complaint filed with Philadelphia Commission on Human Relations, municipal agency created pursuant to Philadelphia Municipal Code and § 962.1 of PHRA, is deemed filed with EEOC). Thus, a PHRC complaint can be deemed filed with the EEOC, despite the fact that plaintiff did not indicate on her PHRC complaint that she was requesting a dual filing.

After filing with the EEOC, a complainant must await the EEOC's determination and issuance of a right-to-sue letter before filing suit in federal court. 42 U.S.C. § 2000e-5(f); See also Reddinger v. Hosp. Cental Servs., 4 F. Supp. 2d 405, 409 (E.D. Pa. 1998) (“To properly sue an employer under the ADA, a plaintiff must first file a charge of discrimination with the [EEOC] and receive a right to sue letter.”). Courts have

dismissed cases in which the plaintiff filed suit but failed to receive a notice of a right to sue. See, e.g. Kent v. Director, Missouri Dep't Elem. and Secondary Educ., 792 F. Supp. 59, 62 (E.D. Mo. 1992) (holding that a right-to-sue letter is a statutory, not a jurisdictional, prerequisite). "However, the Third Circuit has held that it is proper to waive the EEOC administrative process in a suit filed prematurely where the notice of a right-to-sue is issued before trial." Lantz v. Hosp. of the Univ. of Pennsylvania, No. 96-2671, 1996 WL 442795, at *2 (E.D. Pa. July 30, 1996) (citing Molthan v. Temple University, 778 F.2d 955, 960 (3d Cir. 1985)).

The plaintiff here does not have a right-to-sue letter. Nor has either party provided the information necessary for this court to determine whether plaintiff, at this time, could cure thus procedural lacuna by requesting and receiving a right-to-sue letter before trial. Thus, this court cannot establish whether plaintiff has exhausted her administrative remedies, and accordingly, whether she lacks a legal claim upon which relief can be granted. See Hornsby v. United States Postal Service, 787 F.2d 87, 90 (3d Cir. 1986) ("A complaint does not state a claim upon which relief can be granted unless it asserts the satisfaction of the precondition to suit specified by Title VII: prior submission of the claim to the EEOC (or a state conciliation agency) for conciliation or resolution."). However,

I find that even if plaintiff obtained the required right-to-sue letter, she would not be able to survive summary judgment on the merits of her ADA claim.

2. Disability Under the ADA

Section 12112 of the ADA prohibits employers from discriminating against "qualified individual[s] with a disability." 42 U.S.C. § 12112(a). Under the ADA, "a qualified individual with a disability" is a person "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8).

To establish a violation of the ADA, a plaintiff must first assert a prima facie case of discrimination. McDonnell Douglas Corp., 411 U.S. 792, 802 (1973).[4] This court has held that to establish a prima facie case of discrimination under the ADA, a plaintiff must prove that (1) she either had a record of a disability or was regarded as disabled; (2) she was qualified for the job; and (3) she suffered an adverse employment action. Doe v. Kohn, Nast, & Graf, P.C., 862 F. Supp. 1310, 1318 (E.D. Pa.

[4] In order for a plaintiff to establish a case of disparate treatment under the ADA, the Third Circuit has applied the burden-shifting analysis of McDonnell Douglas. See Lawrence v. Westminster Bank New Jersey, 98 F.3d 61,68 (3d Cir. 1996) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 & n.13 (1973)).

1994). Once a plaintiff has established a prima facie case of discrimination, the burden shifts to the defendant to produce evidence of legitimate, non-discriminatory reasons for the discharge. Id. If the defendant meets this burden, the plaintiff must then rebut the defendant's proffered reasons as pretext for discrimination. Id.

Even assuming that plaintiff could make out her prima facie case and establish that she suffered from a physical or mental impairment covered by the ADA,[5] and that she was substantially

---

[5] It is unclear, in fact, whether plaintiff can make out her prima facie case of disability. "Disability" is defined as: "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. 42 U.S.C. § 12102(2). "Major life activities," in turn, are defined in the EEOC regulations as "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i). Although, "[e]motional conditions such as anxiety and depression are disabilities included within the meaning of 'disabled,'" Weiler v. Household Fin. Corp., No. 93 C 6454, 1994 WL 262175, at *3 (N.D. Ill. June 10, 1994) (citations omitted), "temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities." 29 C.F.R. pt. 1630 app., § 1630.2(j). See Sanders v. Arneson Products, Inc., 91 F.3d 1351, 1353-54 (9th Cir. 1996), cert. denied, 117 S. Ct. 1247, 137 L. Ed.2d 329 (1997) (holding that psychological disorder triggered by cancer, lasting less than four months, and having no residual effects was not a "disability" under the ADA); see also McDonald v. Pennsylvania, 62 F.3d 92, 95 (3d Cir. 1995) (holding that disabling, but transitory, abdominal injury was not disability under ADA).

Here, plaintiff's alleged disability was of limited duration. The date of onset of the alleged disability was on or about May 17, 1996. (At her deposition, plaintiff stated that she self-diagnosed her stress, anxiety and depression in March, 1996. However, she has not submitted any medical documentation of an allegedly debilitating condition prior to the May 17, 1996 note from Dr. Kenderdine. Even had plaintiff’s condition commenced in March, still the condition was not of long duration nor could it be considered chronic.) Relatively soon after Pizza Hut notified her of the termination of her employment, on June 14, 1996, plaintiff stated on her application for unemployment compensation that she was able to fully resume work. In fact, she began part-time work on September 3, 1996. Indeed, her own physician stated that plaintiff suffered from "acute severe situational depression," (emphasis added), and further commented that plaintiff did not have "any preexisting depression or poor mechanism for stress control." This evidence tends to show that plaintiff cannot be considered disabled as her stress and anxiety was of a transitory and episodic nature. Any work impairment

limited in the major life activity of working,[6] she is unable to rebut Pizza Hut's legitimate reason for her termination as pretext for discrimination, and has failed to present sufficient

---

plaintiff may have suffered was merely temporary; to be protected by the ADA, a plaintiff's disability must be a permanent or long-term limitation.

[6] Even if plaintiff did establish that she had an impairment that qualified as a disability, only those impairments that "substantially" limit major life activities are covered by the regulations, which state that "substantially limits" means either the individual is unable to perform a major life activity, or, the individual is "significantly restricted as to the condition, manner or duration" under which she can perform the major life activity, when compared to the abilities of the average person in the general population. 29 C.F.R. § 1630.2(j)(1). For an impairment to substantially limit one's ability to work, it must not merely prevent one from working a particular job; it must prevent one from working at a class of jobs or a broad range of jobs in various classes. 29 C.F.R. § 1630.2(j)(3). "The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." 29 C.F.R. § 1630.2(j)(3)(i). "Whether an impairment substantially limits a major life activity depends upon the following factors: (1) the nature and severity of the impairment, (2) the duration re expected duration of the impairment, and (3) the permanent or expected long term impact." Sherrod v. American Airlines, Inc., 132 F.3d 1112, 1119 (5th Cir. 1998)(citing 29 C.F.R. § 1630.2(j)(2)); Brown v. Lankenau Hosp., No. Civ. 95-7829, 1997 WL 277354, at *3 (E.D. Pa. May 19, 1997).

It is thus insufficient for plaintiff to show that her alleged disability prevented her from continuing in her position as manager of the Pizza Hut restaurant. Instead, she must show that she was precluded from performing a broader class of potential jobs for a person with her vocational skills and training. Plaintiff has failed, however, to present any evidence in this regard. Where a plaintiff asserts that she has an impairment that substantially limits her ability to work, she "must present demographic evidence to show what jobs in her geographic area she has been excluded from due to her disability." Taylor v. Phoenixville Sch. Dist., 998 F. Supp. 561, 568 (E.D. Pa. 1998) (citation omitted) (addressing plaintiff's burden under the ADA). Failure to do so is fatal to plaintiff at the summary judgment stage. Id. (citations omitted). Plaintiff has presented no evidence detailing the class of jobs from which she is foreclosed or how she is limited in the major life activity of working, other than her claim that she was unable to work at one particular Pizza Hut restaurant. Statements made at her deposition suggest that plaintiff's stress and anxiety resulted from understaffing at the restaurant she managed, which her own physician termed a "causative work environment." Moreover, on her claim petition for worker's compensation benefits, plaintiff described her alleged disability as "work related stress, anxiety depression." This evidence is not sufficient to establish that she was precluded from working a particular class of jobs. See Gaul v. Lucent Technologies, Inc., 134 F.3d 576, 580 n.3 (3d Cir. 1998) (quoting Weiler v. Household Finance Corp., 101 F.3d 519, 524 (7th Cir. 1996) ("we strongly suspect that a plaintiff who is unable to work with individuals who cause him 'prolonged and inordinate stress' cannot be said to be incapable of performing a 'class of jobs or a broad range of jobs in various classes.'").

evidence to raise a genuine issue of material fact as to defendant's discriminatory animus.

Pizza Hut contends that, as a matter of law, the plaintiff cannot prove that the defendant's reasons for her discharge are pretextual or that disability played any role in the challenged actions. Pizza Hut argues that it had a legitimate, nondiscriminatory reason for firing the plaintiff, specifically, that plaintiff was terminated for violating Pizza Hut policy 913.[7] The Enforcement provision of this policy states:

> PROGRESSIVE DISCIPLINE, manipulation, falsification of documents, or willful non-compliance with this policy will result in the immediate termination of the employee(s) involved.

The defendants have submitted evidence demonstrating plaintiff's violation of policy 913 and have thus met their burden of showing a legitimate, nondiscriminatory reason for the termination of

---

[7] Pizza Hut policy 913 states, in relevant part, that:

> On a daily basis, one deposit containing the prior day's receipts must be taken to the bank before the unit opens for business;
>
> The closing [management person in charge] must count the shift funds and prepare a deposit, including the completion of a deposit slip reflecting the deposit amount;
>
> Only the Unit Manager, Assistant Managers and Shift Managers are allowed to compile and make deposits;
>
> Only the Unit Manager, Assistant Manager and Shift Managers are allowed access to the safe and possession of keys/combination to the safe.

During internal auditing, plaintiff was found to have violated each of these provisions.

plaintiff’s employment. Accordingly, the burden has shifted to the plaintiff to specify facts showing that a genuine issue exists regarding the reasons for her termination.

Under the McDonnell burden shifting analysis, a plaintiff can avoid summary judgment only by presenting direct or circumstantial evidence that could reasonably lead a factfinder to "(1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994). One way to show that an illegitimate factor influenced the employment decision is by proving that "the employer treated other, similarly situated persons not of his protected class more favorably." Id. at 765. That is, the plaintiff can survive summary judgment by showing that "each of the employer's proffered non-discriminatory reasons was either a post hoc fabrication or otherwise did not actually motivate the employment action." Id. at 764 (citations omitted) (emphasis in original).

Mere conjecture that an employer's explanation for an adverse employment action is pretext for intentional discrimination is an insufficient basis for denial of summary judgment in an employment discrimination claim. A "plaintiff cannot simply show that the employer's decision was wrong or

mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent or competent." Fuentes, 32 F.3d at 765. "Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them 'unworthy of credence,' ... and hence infer 'that the employer did not act for the asserted non-discriminatory reasons.'" Fuentes, 32 F.3d at 764 (emphasis in original) (internal citations and brackets omitted).

In her brief, plaintiff argues that:

> The Defendant has failed to articulate a single reason why the investigation into the alleged discrepancies in the audit procedures could not have been conducted upon the completion of the Plaintiff's family medical leave. The absence of this explanation negates the legitimate non-discriminatory reason for the Plaintiff's termination.

Pl.'s Br. at 4. Plaintiff's argument is insufficient to overcome summary judgment. Pizza Hut's audit of plaintiff's restaurant, which revealed inventory and cash discrepancies, took place before she requested leave or notified Pizza Hut of her alleged disability. Plaintiff admits receiving notification that she was under investigation for various violations of company policy, including manipulation of cash control. Moreover, she admits that the notifications defendant sent to her included requests

that plaintiff contact Pizza Hut's representative to discuss the allegations. Plaintiff stated at her deposition that she did not contact Pizza Hut despite its request that she do so because her doctor had instructed her not to have any contact with people from Pizza Hut, since her employment was the cause of her stress and anxiety. Plaintiff, an at-will employee, gave defendant no reason to delay its investigation, and indeed it was under no obligation to do so. Other than her own denials, plaintiff has also not presented any evidence to establish that the allegations that she violated company policy were in any way fabricated or untrue. Since plaintiff has not presented evidence showing that her disability was, more likely than not, a determinative cause for the decision, plaintiff's ADA claim cannot survive summary judgment. Plaintiff has failed to demonstrate any discrimination on the part of the defendant; thus, summary judgment must be entered in favor of the defendant on plaintiff's ADA claim.

B. Family and Medical Leave Act

The Family and Medical Leave Act, ("FMLA"), 29 U.S.C. §§ 2601 et seq., grants an "eligible employee" the right to twelve work weeks of leave, over any period of twelve months: (1) because of the birth of the employee's child, in order to take care of the child; (2) because of the placement of a child with

the employee for adoption or foster care; (3) in order to care for the employee's child, spouse, or parent, if the child, spouse or parent has a serious health condition; or (4) because of a serious health condition that makes the employee unable to perform the functions of the employee's position. 29 U.S.C. § 2612(a)(1). After a period of qualified leave, an employee is entitled to reinstatement to the former position or an equivalent one with the same benefits and terms. 29 U.S.C. § 2614(a). The FMLA declares it "unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided" in the FMLA. 29 U.S.C. § 2615(a)(1). The FMLA similarly declares it "unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful" under the FMLA. 29 U.S.C. § 2615(a)(2).

Plaintiff states that she "was entitled to FMLA protection, she invoked the protections, complied with the requirements and was terminated." Pl.'s Br. at 9. It is unclear whether plaintiff's claim falls under § 2615(a)(1), based on Pizza Hut's failure to restore her to her former position or its equivalent after her FMLA leave ended, or whether it is a claim of retaliatory discharge under § 2615(a)(2).[8] Although her

[8] In her complaint and brief, Plaintiff alleges that she requested and was denied leave prior to the leave that commenced in May 22, 1996. At her deposition, plaintiff clarified that her first request for leave was on May 17, 1996. However, plaintiff has not argued that she is entitled to

allegations suggest retaliation, I find that under the standard for either provision, plaintiff's FMLA claim must fail.

Most courts have held that under § 2615(a)(2) -- the anti-retaliation provision of the FMLA -- the appropriate analysis is McDonnell's burden-shifting approach. See Williams v. Shenango, Inc., 986 F. Supp. 309, 318 (W.D. Pa. 1997) (quoting Kaylor v. Fannin Regional Hospital, Inc., 946 F. Supp. 988, 996-97 (N.D. Ga. 1996)) ("'Congress clearly contemplated that the proper framework for analyzing a retaliation claim based on certain circumstantial evidence under § 2615(a)(2) of the FMLA is the shifting burdens of proof analysis established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).'") However, at least one Circuit Court has rejected the use of the McDonnell burden-shifting analysis for substantive FMLA claims, under § 2615(a)(1). Instead, the Seventh Circuit held that in ruling on a summary judgment motion a court should "ask[ ] whether the plaintiff has established, by a preponderance of the evidence, that he is entitled to the benefit he claims." Diaz v. Fort Wayne Foundry Corp., 131 F.3d 711 (7th Cir. 1997).

As discussed above, under the burden-shifting analysis, plaintiff has not shown that defendant's legitimate reason for the termination of her employment was a pretext for discrimination. Moreover, the record clearly shows that

---

relief for any denial of leave under § 2615(a)(1).

plaintiff would have been terminated regardless of whether she was out on protected FMLA leave. The alleged violations of defendant's company policy took place prior to her approved FMLA leave, and plaintiff has presented no evidence to suggest that her employment was terminated for the exercise of her rights under the FMLA rather than as a consequence of committing those violations. The FMLA regulations state that "[a]n employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period." 29 C.F.R. § 825.216(a). The reinstatement to her position as Manager upon returning from her approved FMLA leave is not something to which plaintiff would otherwise have been entitled. The undisputed evidence shows that plaintiff's employment would have been terminated because of her violations of company policy regardless of whether or not she had taken FMLA leave.

Accordingly, defendant's motion for summary judgment on plaintiff's FMLA claim will be granted.

C. Wrongful Termination

Pizza Hut also moves for summary judgment on plaintiff's wrongful termination claim. In Geary v. United States Steel Corp., 319 A.2d 172 (Pa. 1974), the Pennsylvania Supreme Court

first set forth the possibility of a wrongful discharge claim of an at-will employee. In dicta, the Geary court stated that an action for wrongful discharge might exist only when a clear mandate of public policy is violated and where there is no plausible and legitimate reason for terminating the at-will relationship. Id. at 180. Since Geary, it has been clarified that: "as a general rule, there is no common law cause of action against an employer for termination of an at-will employment relationship . . . Exceptions to this rule have been recognized in only the most limited of circumstances, where discharges of at-will employees would threaten clear mandates of public policy." Clay v. Advanced Computer Applications, Inc., 559 A.2d 917, 918 (Pa. 1989) (citations omitted).

"It must first be determined whether any public policy is threatened thereby; and even when an important public policy is involved, an employer may discharge an employee if he has a separate, plausible and legitimate reason for doing so." Burkholder v. Hutchison, 589 A.2d 721, 723 (Pa. Super. 1991).[9] Here, even if there exists an important public policy, plaintiff has presented no evidence to counter defendant's legitimate reason for the termination of her employment. Plaintiff has

[9] Generally, the important public policies "fall into three categories: an employer cannot require an employee to commit a crime, cannot prevent an employee from complying with a statutorily imposed duty, and cannot discharge an employee when specifically prohibited from doing so by statute." Schick v. Shirey, 691 A.2d 511, 513 (Pa. Super. 1997) (citations omitted).

failed to establish a causal link between her request for medical leave and the termination of her employment. She has in no way demonstrated that her termination resulted from the exercise of her right to medical leave for an alleged disability or serious health condition. For this reason, her common-law wrongful-termination claim, like her federal statutory claims, cannot withstand defendant's motion for summary judgment.[10]

An order follows.

---

[10] Even if plaintiff could establish a cause of action for wrongful termination, she still could not recover. The "only Pennsylvania cases applying public policy exceptions have done so where no statutory remedies were available." Bruffettt v. Warner Comm., Inc., 692 F.2d 910, 919 (3d Cir. 1982); see also Clay, 559 A.2d at 918-19 (Pa. 1989) (citations omitted) ("Nevertheless, inasmuch as appellees failed to pursue their exclusive statutory remedy for sexual harassment and discrimination in the workplace, they are precluded from relief."). Here, the plaintiff has statutory remedies available, namely under PHRA, ADA and FMLA, and is in fact pursuing these remedies. See Hicks v. Arthur, 843 F. Supp. 949, 957 (E.D. Pa. 1994) (holding plaintiff-employees could not pursue wrongful discharge claim for racial discrimination against employer where they had statutory remedies available to them in form of Pennsylvania Human Relations Act, Section 1981, and Title VII of the Civil Rights Act). Because the statutes protect the same interests and provide relief for the same violations that plaintiff alleges, and she has also brought claims under these statutes, summary judgment is warranted on plaintiff's wrongful termination claim.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARY ELIZABETH HOLMES, Plaintiff, v. PIZZA HUT OF AMERICA, INC., Defendant.	Civil Action No.97-4967

O R D E R

AND NOW, this day of August, 1998, Defendant's Motion for Summary Judgment is GRANTED. Judgment is entered against plaintiff and in favor of defendants.

BY THE COURT:

_____

Robert S. Gawthrop, III J.